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ABSTRACT

Desegregation of the Fort Wayne, Indiana, schools has been a focus of concern since the 1960s. However, although Fort Wayne has successfully desegregated its secondary schools within the past 10 years, progress to eliminate racial isolation at the elementary school level has been considerably slower. The present study reviews that progress over the past two years. The data on which the report is based were obtained from written statements, letters, personal interviews, and telephone interviews with individuals knowledgeable about the community and its public schools. Additional information was drawn from testimony presented at a 1978 public hearing. The history of school desegregation in Fort Wayne is briefly outlined. The current desegregation climate is described, with a focus on the areas of school reorganization proposals, community response to these proposals, and the involvement of State and Federal agencies in monitoring and in the enforcement of desegregation statutes. Findings of the study are summarized in terms of student and teacher assignment, State directives and guidance, Federal involvement, and coordination between the Federal and State governments in the enforcement of civil rights laws. Recommendations concerning school reorganization, legislative repeal, the development of consistent legal guidelines, cooperation between State and Federal offices, and future investigation and data collection, are presented. (Author/GC)

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Equal Opportunity In The Fort Wayne Community Schools: A Reassessment

—A report prepared by the Indiana Advisory Committee to the U. S. Commission on Civil Rights

July 1979

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LETTER OF TRANSMITTAL

Indiana Advisory Committee to the
U.S. Commission on Civil Rights
July 1979

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Sirs and Madam:

The Indiana Advisory Committee submits this report as part of its responsibilities to advise the Commission about civil rights problems in the State in general and educational issues within Fort Wayne in particular. In this study, the Advisory Committee examined actions taken subsequent to its 1977 investigation by the Fort Wayne Community Schools (FWCS), other members of the Fort Wayne community, and various State and Federal officials pertaining to the issue of equal educational opportunity. The basic conclusion of this investigation is that equal educational opportunity is not yet a reality in the Fort Wayne elementary schools.

As indicated in its 1977 report, Fort Wayne has successfully desegregated its junior and senior high schools. The Fort Wayne Community Schools, however, have yet to develop a comprehensive plan to eliminate racial isolation at the elementary level. The Office for Civil Rights of the U.S. Department of Health, Education, and Welfare continues to be frustrated by the Esch and Eagleton-Biden amendments in its attempt to pursue administrative remedies. In addition, enforcement efforts are being hindered by a lack of coordination among Federal and State civil rights agencies.

In light of these findings, the Indiana Advisory Committee recommends that: the school superintendent and Board of School Trustees of the FWCS work closely with representatives of the Fort Wayne community to develop a reorganization plan for the elementary schools that will foster high quality desegregated education; Congress repeal the Esch and Eagleton-Biden amendments, thus providing OCR with effective administrative enforcement powers; the President consolidate the resources and authority of the executive branch and develop a vigorous and effective enforcement effort at the Federal level; the Department of Public Instruction of the State of Indiana develop and enforce regulations pertaining to student and teacher assignment, teacher employment, and curriculum content to ensure equal educational opportunity; and State and Federal authorities coordinate their investigative and enforcement activities.

For over 10 years, State and Federal authorities have been investigating a variety of issues related to the failure to achieve equal educational opportunity

in Fort Wayne without reaching any formal conclusions. The Indiana Advisory Committee firmly believes that implementation of the recommendations contained in this report will result in significant progress toward the goal of equal educational opportunity throughout the Fort Wayne Community Schools.

Sincerely,
Harriette B. Conn, Chairperson
Indiana Advisory Committee

Indiana Advisory Committee to the United States Commission on Civil Rights

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Preface

Desegregation of the Fort Wayne Community Schools has been a focus of community concern since the 1960s. For more than 10 years, several Federal agencies have been monitoring progress in faculty and student desegregation. More recently, the State of Indiana Department of Public Instruction has become actively involved in the desegregation issue. Fort Wayne has successfully desegregated its secondary schools. Progress to eliminate racial isolation at the elementary school level, however, has been considerably slower. The present study, which constitutes a followup to the Indiana State Advisory Committee's 1977 report, reviews that progress over the past 2 years.

The data on which this report is based were obtained from written statements, letters, personal interviews, and telephone interviews with individuals knowledgeable about the Fort Wayne community and especially about its public schools. In addition, the Indiana Advisory Committee held a public hearing in Fort Wayne, Indiana, on June 29 and 30, 1978, during which many persons affiliated with the Fort Wayne community groups, and various State and Federal agencies presented testimony.

The supporting documents and hearing transcript are maintained in the files of the Commission's Midwestern Regional Office, Chicago, Illinois. Copies of files of Federal agencies are available to the public through requests made under the Freedom of Information Act, 5 U.S.C.A. §552, as prescribed by the Commission's rules and regulations for the filing and granting of such requests, 45 C.F.R. §704, including procedures for requesting waiver of search and copying fees under certain conditions.

All inquiries for documents under the Freedom of Information Act should be sent to the Director of the Commission's Midwestern Regional Office, 230 S. Dearborn St., Room 3280, Chicago, Illinois 60604.

Acknowledgments

This report was written by Frank J. Alford, equal opportunity specialist, and Ruthanne DeWolfe, regional attorney; they also conducted the field investigation. Editorial assistance was provided by Gregory D. Squires, research/writer. Other assistance in the preparation of this report was provided by Delores Miller, administrative assistant, and Ada L. Williams, clerk-stenographer. The report was prepared under the supervision of Clark G. Roberts, Regional Director, Midwestern Regional Office, U.S. Commission on Civil Rights.

Preliminary drafts of the report were sent to all individuals who presented testimony at the public hearing conducted by the Indiana Advisory Committee on June 29 and 30, 1978, or who presented a written statement to the Advisory Committee. Comments were received from Lester L. Grile, superintendent, Fort Wayne Community Schools; Leonard Goldstein, former president, Fort Wayne School Board of Trustees; Dallas Daniels, director of the Equal Educational Opportunity Division, Department of Public Instruction, State of Indiana; Lethenius Irons, educational consultant, Equal Educational Opportunity Division, Department of Public Instruction, State of Indiana; Daniel Jennings, attorney, Civil Rights Division, U.S. Department of Justice; and Albert Hamlin, Assistant General Counsel, Office for Civil Rights, Department of Health, Education, and Welfare. Comments were incorporated where appropriate in the body of the report.

Final preparation of the report for publication was the responsibility of the staff of the Publication Support Center.

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Chapter 1

School Desegregation in Fort Wayne—A Brief History

The Fort Wayne community has experienced more than 10 years of conflict over the issue of school desegregation. First there was a school boycott in the 1960s, and since 1968 several Federal agencies have conducted investigations of the Fort Wayne Community Schools (FWCS). In 1975 the U.S. Department of Health, Education, and Welfare (HEW) determined that the FWCS were in noncompliance with Title VI of the Civil Rights Act of 1964 with respect to faculty assignment. In 1977 a private lawsuit was brought against the FWCS by several community leaders who alleged that the desegregation plan placed an inequitable burden on minority students.

In the past year, racial isolation of students in the FWCS was reduced after having increased steadily during the first 6 years of this decade. As table 1 indicates, the percentage of schools having a minority enrollment of less than 5 percent or more than 50 percent has declined as has the proportion of minority students attending schools with a minority enrollment greater than 50 percent. These changes have resulted primarily from the closing of three inner city schools with an average minority enrollment of 91.2 percent and the transfer of the students to 11 schools with an average minority enrollment of 3.5 percent prior to the transfer.[1]

In the spring of 1977, the Indiana Advisory Committee to the U.S. Commission on Civil Rights after thorough investigation found that: (1) racial isolation in the FWCS had been steadily increasing for several years; (2) HEW's Office for Civil Rights (OCR) had recently conducted an inadequate investigation of potential Title VI violations in student assignment and was not adequately monitoring an agreement it had entered into with the FWCS regarding faculty desegregation;[2] (3) the U.S. Department of Justice (DOJ) had received several complaints of discrimination from Fort Wayne parents but had not determined whether it would take action; and, (4) the superintendent's school reorganization plan was being severely criticized by several community groups for providing too little desegregation while placing the entire desegregation burden on the minority community.

As a result of these findings, the Indiana Advisory Committee recommended: (1) That OCR reopen its investigation of student assignment practices and

[1] Data submitted by Supt. Lester L. Grile, Fort Wayne Community Schools, to Frank Alford, Midwestern Regional Office (MWRO), U.S. Commission on Civil Rights, Aug. 10, 1978. The data reflect changes in minority composition before and after three schools were closed in 1977. The elementary schools closed were Hanna (minority enrollment of 93.5 percent), Harmar (minority enrollment of 89.4 percent), and McCulloch (minority enrollment of 90.4 percent). Hanna students were transferred to Lindley, Nebraska, Washington, Hoagland, and Anthony Wayne. Harmar students were transferred to Riverside, Forest Park, and Slocum. McCulloch students were transferred to Northcrest, Lincoln, and Brentwood.

[2] Supt. Lester L. Grile, after reviewing a preliminary draft of this report, stated in a letter Apr. 5, 1979, to MWRO staff, U.S. Commission on Civil Rights:

> The draft report characterizes the Indiana Advisory Committee's investigation as "thorough" and HEW's as "inadequate." The Advisory Committee's 1977 activities, as well as its so-called 1978 "review" were cursory and superficial, to say the least, whereas the opposite is true with respect to HEW's and DOJ's previous investigation. Just because HEW and DOJ came to opposite conclusions than the Indiana Advisory Committee does not make one "inadequate" and the other "thorough." We are prepared to support this position by reference to the quantity, quality and depth of each groups's investigation, and the reliability of the source material upon which each has apparently relied.

The nature of the conclusions, of course, does not in and of itself determine adequacy or thoroughness. Despite the quantity, quality, and depth of each group's investigation, in 1977 the Indiana Advisory Committee found serious inadequacies in OCR's investigation. Those findings were based on documents received from OCR and the Fort Wayne Community Schools, not on verbal statements. That serious problems exist with OCR's enforcement program is no longer an issue. Studies made by local, State, and national organizations have documented serious inadequacies, some resulting in successful litigation against HEW. In one case it was OCR's inaction relative to 39 school districts, including Fort Wayne, which resulted in a court order requiring OCR to, in essence, fulfill its enforcement responsibilities.

TABLE 1

Desegregation in Fort Wayne Community Schools: 1970–78

	1970–71	1975–76	1977–78
Total enrollment	43,400	40,250	38,570
Elementary	24,901	21,750	20,418
Junior & senior highs	18,499	18,500	18,152
Minority enrollment total	7,025 (16%)	7,911 (20%)	8,041 (21%)
Elementary	4,409 (18%)	4,404 (20%)	4,416 (22%)
Junior & senior highs	2,616 (14%)	3,507 (19%)	3,625 (20%)
Number of elementary schools	41	46	42
Number of junior & senior highs	18	18	19
	1970–71	**1975–76**	**1977–78**
Percent of schools with less than 5% or more than 50% minority enrollment			
Elementary	66%	72%	45%
Secondary	72%	0%	0%
Percent of school with minority enrollment between 10% and 30%			
Elementary	17%	20%	33%
Secondary	17%	89%	84%
Percent of minority students in schools with 50% or more minority enrollment			
Elementary	67%	78%	59%
Secondary	65%	0%	0%
Percent of minority students at all levels in schools with 50% or more minority enrollment	66%	43%	33%

Source: Fort Wayne Community Schools, Enrollment Data: 1970–71 1975–76, and 1977–78.

begin to monitor FWCS compliance with the teacher assignment agreement, (2) that DOJ more actively pursue its investigation of complaints of discrimination submitted by Fort Wayne residents, and 3) that the FWCS work with the Fort Wayne community in developing a new reorganization plan incorporating the concerns raised pertaining to desegregation.[3]

In light of recent events in the Fort Wayne community, the Indiana Advisory Committee decided to follow up its 1977 report. The Advisory Committee's principal objectives were: 1) To determine what action had been taken on its previous recommendations, and 2) to evaluate what, if any, progress has been made towards resolving the problems they had identified. As part of that followup, an informal hearing was conducted in Fort Wayne on June 29–30, 1978.

At that hearing, statements were presented by representatives of various segments of the Fort Wayne community including: Lester L. Grile, superintendent of the Fort Wayne Community Schools; Leonard Goldstein, then president of the school board; Gayle Greer, Fort Wayne Urban League; and other community leaders. Further information on student and teacher assignments and various community viewpoints on these issues was obtained from documents submitted to the Advisory Committee.

In the following pages, the Advisory Committee reviews current controversies and proposals; activities of local, State, and Federal officials; and the status of the Committee's previous recommendations. Finally, the Advisory Committee offers additional recommendations for making equal educational opporunity a reality in Fort Wayne.

[3] Indiana Advisory Committee to the U.S. Commission on Civil Rights, *Equal Opportunities in the Fort Wayne Community Schools: A Continuing Struggle* (1977), pp. 14, 15 (hereafter cited as *Continuing Struggle*).

Chapter 2

The Struggle Continues

Activity Within Fort Wayne

1. School Reorganization Proposals

On January 24, 1977, Superintendent Lester L. Grile submitted a school reorganization plan to the trustees of the Fort Wayne School Board.[1] The stated objectives of the plan included improving educational programs in the schools, upgrading facilities to meet present and future needs, and improving racial balance in the schools. The plan emphasized that all components of the plan must be economically feasible. Implementation of the recommendations was to be completed by 1983.

At the request of the board of trustees, Superintendent Grile revised certain aspects of the plan.[2] However the board defeated the revised plan in May 1977 and instead submitted their own reorganization plan for the Fort Wayne Community Schools. This plan is referred to in the community as the "Goldstein plan," although it was authored by four members of the board including Mr. Goldstein.[3] The two plans differed significantly. First, the Goldstein plan recommended closing two elementary schools, instituting program changes at six additonal schools, and reassigning students to seven other schools.[4] This plan recommended assigning transferred pupils to the most recently built or refurbished and spacially adequate facilities available. In addition, the Goldstein plan intended to involve as many schools as possible in desegregation activities. The Grile plan, on the other hand, had recommended closing four elementary schools altogether, discontinuing elementary programs at two other schools, and reassigning the students to the next nearest school. Under the Grile plan, schools with initially predominantly black student populations would have become almost totally black.[5]

Unlike the Grile plan, the Goldstein plan emphasized improved racial balance as the principal goal of the reorganization plan. The Grile plan, on the other hand, did not make the achievement of racial balance a predominant goal below the middle school level. In order to ensure a consistent progression throughout a student's school years, the Goldstein plan proposed that pupils attending elementary school together would continue together through middle and high school.[6]

At the middle school level, the Goldstein plan recommended using two schools located in the principally black central city area as middle schools in order to create sizable white enrollments. Under the Grile plan, these central city schools would have been used to receive central city elementary school

[1] Lester L. Grile, superintendent, Fort Wayne Community Schools, *A Proposed Plan for the Fort Wayne Community Schools 1977-1983*, Jan. 24, 1977.

[2] Leonard Goldstein, president, Board of School Trustees, Fort Wayne Community Schools, statement to the Indiana Advisory Committee to the U.S. Commission on Civil Rights, June 30, 1978, transcript, p. 8 (hereafter cited as Goldstein Statement).

[3] Leonard Goldstein, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Fort Wayne, Indiana, June 30, 1978, transcript, p. 202 (hereafter cited as Goldstein Testimony).

[4] Goldstein Statement, pp. 9, 10.

[5] Ibid., p. 9.

[6] Ibid.

children displaced by the closing of two other central city schools.[7]

While the Grile plan recommended building a new high school in a predominantly white neighborhood in the northeast section of Fort Wayne, the Goldstein plan proposed instead that programs be expanded at the Regional Vocational Center located in the central city area. By increasing the number of courses available at the Regional Vocational Center, students would be able to obtain most of their high school education there. Further, increased enrollment at the Regional Vocational Center would alleviate the space problems anticipated in the Grile plan.[8]

The Goldstein plan was accepted by the board at its May 1977 meeting. The school superintendent was directed to implement this plan for accomplishing citywide desegregation of the elementary schools.[9] As part of the plan to maintain some kind of school or community activity in all neighborhoods, two schools, Harmar (which had a small pupil enrollment and was in need of substantial repair) and Hillcrest, would be closed. All other schools would remain open and offer some kind of school activity.

Superintendent Grile proceeded to implement that part of the Goldstein plan that had been adopted by the board. After community response to the plan, however, he submitted two modifications to the board's reorganization proposal.[10] First, he proposed that all Title I programs, which are intended to meet the special educational needs of children from low-income families, be eliminated from Hanna, a central city school.[11] Secondly, because only kindergarten pupils would remain in Hanna after the elimination of Title I programs, he recommended that those pupils be reassigned to other schools.[12] With the stipulations that pupils be reassigned only where walking distances would not be significantly increased and that the Hanna building would be used for an educational purpose such as an administrative center, the board agreed to Superintendent Grile's recommendations at its August 1977 meeting and incorporated them into their reorganization plan.[13]

2. Community Response to School Reorganization Proposals

The original reorganization plan submitted by Superintendent Grile in January 1977 had drawn sharp criticism, not only from some members of the Board of School Trustees but also from various community groups and other Fort Wayne residents. For example, Frank W. Heyman, then executive director of the Allen County Economic Opportunity Council, accused Superintendent Grile of "arrogance" in the manner in which the plan was presented to the community.[14] Former mayor Ivan Lebamoff criticized the school administration as unwilling to accept input from the community.[15] Other groups, including the Fort Wayne Urban League, NAACP, and the Fort Wayne Education Association, publicly criticized the Grile plan.[16]

In contrast, the Goldstein plan generated little response.[17] Mr. Goldstein interpreted this lack of public response as community acceptance of the goal of ultimate desegregation, which would result from the voluntary movement of both white and black pupils into formerly racially isolated schools.[18] According to Mr. Goldstein, white children would be attracted to the two proposed elementary magnet schools and two enrichment centers in the central city. In addition, reassigning black children to principally white outlying schools would achieve racial balance in those schools and relieve overcrowding in the central city schools.[19]

After adoption of the revised Goldstein plan in August 1977, representatives of the black community, including parents of children who were being

[7] Lester L. Grile, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Fort Wayne, Indiana, June 30, 1978, transcript, pp. 171–72 (hereafter cited as Grile Testimony); Goldstein Testimony, p. 203.

[8] Jeff Towles, chairman, Legal Action Committee of Fort Wayne, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Fort Wayne, Indiana, June 29, 1978, transcript, pp. 33, 34 (hereafter cited as Towles Testimony); Goldstein Testimony, pp. 205, 206.

[9] Goldstein Statement, pp. 10, 11; Lester L. Grile, letter to staff, Midwestern Regional Office, U.S. Commission on Civil Rights, Apr. 5, 1979.

[10] Goldstein Statement, p. 13.

[11] Elementary and Secondary Education Act of 1965, Title I, Pub. L. No. 89–10, 79 Stat. 27, *as amended by* the Education Amendments of 1978, Pub. L. No. 95–561, 92 Stat. 2153.

[12] Goldstein Statement, p. 14.

[13] Ibid.

[14] *Journal Gazette*, Feb. 15, 1977.

[15] Ibid., Feb. 17, 1977.

[16] James W. Breedlove, president, Fort Wayne NAACP; Gayle Greer, director, Fort Wayne Urban League; Frank Heyman, director, Allen County Economic Opportunity Council; Dr. Jeff H. Towles, chairman, Fort Wayne School Board; Lester L. Grile, superintendent, Fort Wayne Community Schools; Leonard Hamilton, equal opportunity specialist, Office for Civil Rights, Department of Health, Education, and Welfare; Janice Little, past president, Teachers Association, Fort Wayne, Indiana; Paul Mendez, member, Educational Council for Latino Affairs, Fort Wayne, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, Hearing, Fort Wayne, June 29–30, 1978, transcript, pp. 11–96 and 116–261.

[17] Goldstein Statement, p. 11.

[18] Ibid., p. 12.

[19] Ibid., p. 9.

scheduled for busing to principally white schools, filed suit in the Federal district court to enjoin that plan.[20] The plaintiffs' principle objection to the plan was that it placed the entire burden of desegregation activities on black children. Only black children would be involuntarily bused to predominantly white schools, farther from their homes than the schools they were presently attending. In addition, the plan would, it was alleged, impose an unequal and unreasonable burden on many black children by forcing them to travel long distances on foot, across dangerous thoroughfares, in order to reach their new schools.

The court indicated that any plan to desegregate the Fort Wayne Community Schools which places the burden of desegregation on black children alone is constitutionally deficient. Both black and white children alike must share that burden. Nonetheless, the court refused to grant the plaintiffs' request for a preliminary injunction and instead urged the parties to settle their conflicts over the proposed reorganization plan.[21] The parties immediately entered into negotiations to resolve their differences and ultimately reached a settlement on December 2, 1977. That settlement provided that no children would be involuntarily bused although optional elementary school transfers would be encouraged. In addition, magnet schools would be created in both the principally black central city and in the principally white outlying areas.

The agreement also provided that Harmar would be razed and a new school would be built in the same area. Other central city schools would be remodeled. The grade structure would be reorganized to include kindergarten through 5th grade in the elementary schools, 6th through 8th grades in the middle schools, and 9th through 12th in the high schools. Finally, no elementary school student, white or minority, would be involuntarily transferred to a school other than the school closest to his or her residence for purposes of achieving racial balance.[22]

At the present time, some aspects of the settlement agreement have been implemented, in particular the voluntary transfer plan. Other provisions, however, are still at the planning stage.[23] For example, no magnet schools had been opened by the end of the 1978–79 school year, although they are expected to open in September 1979.[24] The court has retained jurisdiction over implementation of the entire agreement.[25] Therefore, the parties may decide in the future to seek further judicial guidance.

Other segments of the Fort Wayne community have also expressed strong opinions concerning desegregation of the schools. In 1976 the Urban League of Fort Wayne conducted a survey of high school seniors' perceptions of school programs and school desegregation in the FWCS.[26] The senior class was the first group to have gone through the secondary desegregation process since student assignment for purposes of achieving racial balance began in 1971. Students, organized into discussion groups, were asked their opinions of elementary school desegregation. In every discussion group, a majority of students stated that desegregation at the elementary school level is desirable and should be implemented. These students thought that desegregated education should begin as early as possible, when the racial attitudes of students are still developing.

A typical comment in favor of elementary desegregation was made by a female student who said, "Students should be in desegregated settings starting in kindergarten. Elementary desegregation is good because racial attitudes haven't formed yet at that early age." Although the students themselves favored desegregated education, a majority surveyed (55.5 percent) said that teachers and administrators were not promoting better racial understanding. This is a significant figure in light of the fact that the question was asked in a manner which suggested an affirmative response. The specific question was, "How are teachers and administrators promoting understanding?" Many students spontaneously contributed written comments. A white female simply

[20] Payton v. Fort Wayne Community Schools Board of Trustees, No. F 77-92 (N.D. Ind., filed Sept. 6, 1977).
[21] Payton v. Fort Wayne Community Schools Board of Trustees, No. F 77-92, Interim Order of Sept. 6, 1977 (N.D. Ind., filed Sept. 6, 1977).
[22] Payton v. Fort Wayne Community Schools Board of Trustees, No. F 77-92, Stipulation of Dec. 2, 1977 (N.D. Ind., filed Sept. 6, 1977).
[23] Grile Testimony, p. 143.
[24] Lon Brown, Chief, Indiana Branch, Secondary Education Section, OCR (HEW), Region V, Cleveland, Ohio, telephone interview, Feb. 2, 1979; telephone interview with Lester L. Grile, superintendent, Ft. Wayne Community Schools, May 31, 1979.
[25] Payton v. Fort Wayne Community Schools Board of Trustees, No. F 77-92 (N.D. Ind., filed Sept. 6, 1977).
[26] Fort Wayne Urban League, *Fort Wayne, Indiana Students Speak: A Study Of High School Seniors' Perceptions of School Programs and School Desegregation* (1977). (Hereafter cited as *Students Speak.*) The sample groups for this project were high school seniors in six Fort Wayne high schools—Emhurst, South Side, North Side, Wayne, Northrop, and Snider. Students involved in this project were chosen by school principals and their designates.

answered, "I honestly don't know." Another white female said, "They aren't as far as I can see. How can they themselves promote something they don't believe in?" Still another said, "I've never really seen anything that they've tried to do." A white male said that the question was a "joke." A black male responded simply, "they are not." Several students said that many teachers don't care enough to promote racial understanding, "teachers are apathetic as hell!"

Of the students who said that teachers and administrators are promoting racial understanding, many (44.5 percent) said it is being done by treating all students equally. Others said it is being accomplished by urging students to participate in activities, hiring both black and white teachers and administrators, and eliminating tracking. A black female said, "In most cases, everyone is treated equally and people with prejudices tend to leave them at home." A white female added, "They are attempting to keep classes desegregated by de-laning [not tracking] and eliminating honors classes and slow classes because they tend to be racially oriented."[27]

The Indiana Advisory Committee to the U.S. Commission on Civil Rights held an informal hearing in Fort Wayne on June 29–30, 1978, to determine the progress, if any, achieved by the FWCS in remedying racial imbalance in the schools since the Advisory Committee issued its report in May 1977. Several community leaders testified at the hearing that the administration of the school system has a long history of ignoring the needs and concerns of the minority community. For example, Gayle Greer, then executive director of the Fort Wayne Urban League, stated that the drive to desegregate the Fort Wayne schools was initiated by the black community and for many years was unheeded by the administration.[28] When the administration did respond to the minority community, Ms. Greer said, it did so by placing the entire burden for implementing desegregation on the black children through one-way busing.[29] In addition, she said, by closing central city schools, decay and deterioration of the community would be encouraged. Ms. Greer indicated that the objective of the lawsuit was to avoid these consequences. She raised another point concerning teacher employment practices:

> During the 1977–78 school year, there was approximately a 20 percent minority student enrollment, while only about 8 percent of the faculty was minority. Yet the school corporation offers, at best, weak excuses and questionable explanations as to the underutilization of minorities. And if there is a program to increase the number of minorities it is well-hidden.

James W. Breedlove, president of the Fort Wayne NAACP, told the Indiana Advisory Committee that there is a continuing lack of equal educational opportunity in the schools.[30] He said that viable inner-city educational facilities must be maintained in Fort Wayne and two-way busing instituted in order to improve racial desegregation of the elementary grades. According to Mr. Breedlove, he based this assessment on the results of a 1975 study by the Office of Educational Services, George Peabody College for Teachers, undertaken at the request of the Fort Wayne Board of School Trustees.[31] This study concluded that there is no viable alternative to busing to effect desegregation where, as in Fort Wayne, racial separation prevails in residential housing patterns.[32] Mr. Breedlove said that it is imperative to include members of the minority community in the entire decisionmaking process concerning desegregation of the Fort Wayne schools.[33]

Dr. Jeff Towles, chairman of the Legal Action Committee of Fort Wayne, stated that desegregation of the high schools and junior high schools had been

[27] *Students Speak*, p. 11.

[28] Gayle Greer, executive director, Fort Wayne Urban League, statement to the Indiana Advisory Committee to the U.S. Commission on Civil Rights, June 29, 1978, p. 2.

[29] Ibid., pp. 1-3.

[30] James W. Breedlove, president, Fort Wayne NAACP, letter to Harriette B. Conn, Chairperson, Indiana Advisory Committee to the U.S. Commission on Civil Rights, June 5, 1978. James W. Breedlove, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Fort Wayne, Indiana, June 29, 1978, p. 26.

[31] George Peabody College for Teachers, Office of Educational Services, Nashville, Tenn. *Fort Wayne Community Schools Survey Report*, 1975.

[32] Ibid., p. 252.

[33] After reviewing a preliminary draft of this report, Supt. Lester L. Grile stated in a letter to staff, Midwestern Regional Office, U.S. Commission on Civil Rights, Apr. 5, 1979, in regard to this paragraph:

> there is a false implication. . .that "equal educational opportunity" is legally or factually synonymous with racial balance. This is not the case, and has never been so established in any court of law or otherwise. But it is one thing to state that integrated education is positive and desirable (which we agree) even where a school system has not violated the law by bringing about the absence of integrated education (which is the case in Fort Wayne), and quite another thing to assume that the absence of integrated education automatically means the absence of equal educational opportunity. With this latter proposition, we most certainly do not agree, and the weight of authority, both legal and practical, and the weight of experience would appear to bear this out.

The Indiana Advisory Committee reminds Mr. Grile that the concept of separate but equal was declared unconstitutional by the United States Supreme Court in 1954 in the case of Brown v. Board of Education, 347 U.S. 483 (1954).

achieved by moving black students. In discussing the lawsuit to enjoin the plan to desegregate the elementary schools, Dr. Towles concluded:

> One-way busing, which we have seen on two occasions—high school and junior high—was a bitter pill that we could not swallow a third time. Desegregation should be borne by the entire community, not just one phase.[34]

Frank W. Heyman, executive director of the Allen County Economic Opportunity Council, criticized the Fort Wayne Community Schools for a lack of commitment to desegregation on the part of those in leadership positions. According to Mr. Heyman, the school board, the school administration, the community leaders, and community groups themselves must commit themselves to the goal of racially balanced schools:

> A cross section of participation. . .must be brought to bear if we're going to have a locally determined desegregation policy that can be implemented. Without that kind of participation, without that kind of policy, without that kind of commitment going up the ladder of priorities, we're faced with a situation where attrition will finally take its toll so Federal intervention will be the only solution.[35]

Janice Little, former president of the Fort Wayne Educational Association, was also critical of the ability of the January 1977 Grile plan to desegregate the FWCS at the elementary level. She said she thought the plan had merit but was deficient because it was not a plan that would desegregate elementary school children. She also noted that the plan placed the major burden on the minority community while failing to meet the needs of the total community. Ms. Little said:

> The Fort Wayne Education Association supports desegregation of the Fort Wayne Community Schools to help prepare children to live in a multicultural society. From an educational standpoint we realize that the formation of stereotypes and prejudices occurs at a very early age. Children need positive experiences with other cultures throughout their lives, which should begin in a desegregated classroom. Achievement is enhanced and motivation is increased, resulting in more positive attitudes.[36]

Paul Mendez, a member of the Education Council for Latino Affairs, presented testimony concerning educational issues confronting the Fort Wayne Latino community. He stated that no bicultural or bilingual educational program had been implemented by the FWCS, although proposals for such programs had been submitted to the Board of School Trustees. For example, early in 1976 the Metropolitan Human Relations Commission published the results of a survey of the Spanish-speaking community of Fort Wayne. A copy of this survey was sent to the school administration. The number one recommendation of this survey was "the introduction of a bicultural-bilingual program in the Fort Wayne Community Schools."[37] The survey concluded that "both the loss of the language (Spanish) and difficulties with English make the introduction of a bilingual-bicultural program in the public schools eminently desirable (and necessary). Such a program would have the support of the majority of the Spanish-Speaking Community." The survey also noted that the program proposals mentioned above had been submitted to the superintendent and the school board.[38]

Members of the Educational Council for Latino Affairs have met with the Board of School Trustees and presented a list titled "Problems and Recommendations for Improvement." The council's report indicated that Latino children are achieving below grade expectancy level because of their limited knowledge of English and recommended implementing bilingual-bicultural programs. A second problem noted by the council was the absence of Spanish-speaking teachers and administrators. According to Mr. Mendez, little or no progress has been made in developing bicultural-bilingual programs as evidenced by the insignificant number of Latino teachers employed by the FWCS.[39] Table 2

[34] Towles Testimony, pp. 35, 36; Payton v. Fort Wayne Community Schools Board of Trustees, No. F 77-92 (N.D. Ind., filed Sept. 6, 1977).
[35] Heymen Testimony, pp. 92-93.
[36] Janice Little, statement to the Indiana Advisory Committee to the U.S. Commission on Civil Rights, June 30, 1978, transcript, p. 1.
[37] Mendez statement to the Indiana Advisory Committee to the U.S. Commission on Civil Rights, June 30, 1978, p. 1 (hereafter cited as Mendez Statement).
[38] Ibid., pp. 111-12.

[39] Along with his Apr. 5, 1979, response to the preliminary draft of this report, Superintendent Grile transmitted to the Midwestern Regional Office, U.S. Commission on Civil Rights, a copy of a letter dated Mar. 19, 197[illegible] addressed "To whom it may concern" and signed by Graciela Beecher, director, Latin American Education Center (LAEC), indicating that the FWCS have been improving services to the Latino students by entering into a "consortium" with LAEC. According to the letter, LAEC is to conduct several programs including cultural awareness at one

TABLE 2

Latino teachers for school year 1976–1977

High school teachers	5 out of 391 (1.28%)
Junior high school teachers	4 out of 416 (.96%)
Elementary teachers	13 out of 880 (1.48%)
Vocational centers and nonschool units	3 out of 62 (.48%)
All teachers	15 out of 1,749 (.86%)
Administration	0 out of 350 (0%)
Certified personnel	15 out of 1,949 (.77%)

Source: Fort Wayne Community Schools, Personnel Data: 1976–1977.

presents the number of Latino teachers employed in the FWCS in 1976–1977.

The Education Council for Latino Affairs has advocated the magnet school approach as an effective vehicle for implementing bilingual-bicultural programs. The council objected to the Grile plan of January 1977, not because it recommended magnet schools but because it lacked a bilingual-bicultural program. The council gave at least qualified approval to the May 1977 Goldstein plan because it did include the concept of a bilingual program. The Latino community was not represented in the *Payton* lawsuit to enjoin the August reorganization plan, nor was it party to the agreement to settle the suit.[40] The council has continued to meet with school administrators and HEW's Office for Civil Rights, although, according to Mr. Mendez, little or nothing has materialized to aid the needs of the Spanish-speaking. "We hope that the invisible minority has not become a forgotten minority in the city of Fort Wayne," he said.[41]

In his testimony before the Indiana Advisory Committee in June 1978, Superintendent Grile discussed the August 1977 plan:

> It is a position that under this voluntary plan the parents of boys and girls in grades K through 5 who want their children to be involved in a school situation with more racial balance than in their present schools have the right and the option to make that change, depending on their own personal commitments.[42]

He concluded that he was opposed to the involuntary busing of pupils to achieve racial balance in the elementary schools.[43] Superintendent Grile has also stated his position on racial balance to the Fort Wayne Metropolitan Human Relations Commission, which included the following:

> I know of no proof that the elementary school can change the attitudes and values of elementary children from those of their parents and their neighborhoods.
>
> I am not against racial balance, or desegregation, or integration.
>
> The elementary schools can do more in Fort Wayne for inner city children close to their homes and in cooperation with other agencies than any other way.
>
> But if we were told to achieve a racial balance in the elementary schools, I see no way at this time in the elementary grades without transporting children out (and we have no place to put them and we cannot leave seven buildings vacant).
>
> This would leave two-way busing and I cannot recommend this because it is in my opinion not educationally sound or economically feasible.[44]

The information gathered by the Indiana Advisory Committee suggests that community involvement of some groups in the FWCS desegregation issue has at times been publicly intense. At the present time, only limited action toward achieving racial balance

elementary school, dropout prevention, basic skills, and a lending library for Latino youngsters and their parents.

[40] Payton v. Fort Wayne Community Schools Board of Trustees, No. F 77 [illegible] (N.D. Ind., filed Sept. 6, 1977).

[41] Mendez Statement, p. 2.

[42] Grile Testimony, p. 199.

[43] Ibid., p. 171.

[44] John M. Beans, executive director, Fort Wayne Metropolitan Human Relations Commission, letter to the Indiana Advisory Committee to the U.S. Commission on Civil Rights, Aug. 3, 1978 (hereafter cited as Beans Letter, Aug. 3, 1978).

at the elementary school level is being taken by the FWCS. In the following section, the report evaluates activities at the State level in regards to the FWCS.

State Involvement in the Fort Wayne Community Schools

1. Indiana State Department of Public Instruction

Indiana expressly prohibits the segregation of public school pupils based on race.[45] However, the State does not prohibit the existence of racially isolated schools in communities such as Fort Wayne with segregated housing patterns and a neighborhood school policy. In the latter case, the Indiana Department of Public Instruction (DPI) is empowered only to disapprove school construction and renovation plans where these changes would foster racial isolation in the schools.[46] Any school district within Indiana having a minority population of 5 percent or more must request prior approval for building, renovating, or remodeling education facilities from the Department of Public Instruction. Such requests are reviewed first by the Equal Educational Opportunity Division (EEOD) of the DPI. The EEOD sends a staff person to conduct a demographic analysis of the school system to determine if it is maintaining racially isolated schools. Both teaching staff and student population are evaluated.

As a result of this review, a recommendation to approve or disapprove the application is made by EEOD staff to the Division of Schoolhouse Planning of the DPI. If a school submits plans for alleviating the racial isolation, those plans are also reviewed by EEOD. According to Lethenius Irons, consultant to the EEOD, his office encourages school districts that are maintaining racially isolated schools to request technical assistance from the EEOD. A consultant will then work with the local educational agency to assist in correcting the imbalance.

Mr. Irons has stated that Superintendent Grile submitted a school reorganization plan, based on the *Payton* settlement agreement, to the EEOD in January 1978 for a determination of whether it complied with State guidelines. The EEOD determined in April 1978 that 9 of 42 Fort Wayne elementary schools were maintaining racially isolated student populations in violation of those guidelines. Nonetheless, the FWCS did not request any technical assistance from EEOD to overcome the racial imbalance.[47]

Subsequently, Dr. Ronald A. Boyd, associate superintendent of the Department of Public Instruction, informed Superintendent Grile that the FWCS faced a very real problem, not only of eliminating racially isolated schools but also of bringing all schools within the range of not more than 30 percent minority students in any school, a goal previously set by the Fort Wayne Community Schools Board of Trustees. Mr. Boyd also indicated that he would review any building plans and assurances of a commitment to end racial isolation in the schools submitted by FWCS.[48] Because State officials are responsible for ensuring that instructional and building programs do not promote racial isolation in Indiana public schools, Mr. Boyd offered active DPI assistance in solving the Fort Wayne school problems.[49] He concluded, "We must inform you that Fort Wayne Community School district is in a state of non-compliance with state and federal civil rights laws."[50]

In February 1978, Superintendent Grile requested approval from the FWCS to remodel Harmar and McCulloch Elementary Schools. This plan represented part of the agreement, discussed above, reached by the plaintiffs in the suit *Payton v. Fort Wayne Community Schools Board of Trustees.*[51] Mr. Boyd subsequently informed Mr. Grile that the requests for the renovation of McCulloch and the replacement of Harmar had been denied, in large part because these changes would promote racial isolation in the schools.[52] Mr. Boyd indicated several areas of concern in regard to the Grile plan for integrating the FWCS. He suggested that Harmar and McCulloch schools could be rebuilt or renovated on their current sites if the board passed a

[45] Ind. Code Ann. §20-8.1-2.1 (Burns 1975).
[46] Lethenius Irons, educational consultant, Indiana Department of Public Instruction, telephone interview, Mar. 16, 1979. Ind. Code Ann. §§20-1-1-6(b)(1) (Burns 1975 and Burns Supp. 1978).
[47] Lethenius Irons, interview in Indianapolis, Ind., Aug. 31, 1978.
[48] Ronald A. Boyd, associate superintendent, Indiana Department of Public Instruction, letter to Lester L. Grile, superintendent, Fort Wayne Community Schools, Jan. 13, 1978 (hereafter cited as Boyd Letter, January 1978).
[49] Ronald A. Boyd, letter to Lester L. Grile, Apr. 13, 1978 (hereafter cited as Boyd Letter, April 1978).
[50] Boyd Letter, April 1978.
[51] Payton v. Fort Wayne Community Schools Board of Trustees, No. F 77-92 (N.D. Ind., filed Sept. 6, 1977).
[52] Robert J. Ice, director, Division of Schoolhouse Planning, DPI, letter to Stella Young, director, Equal Educational Opportunity Division, DPI, Feb. 23, 1978; also Ronald Boyd, letter to Lester L. Grile, Mar. 30, 1978.

resolution guaranteeing that the schools would not be more than approximately 35 percent minority. Mr. Boyd further indicated that the problem of eliminating racial isolation in the Fort Wayne schools should be addressed by developing a comprehensive plan rather than by constructing and remodeling schools that would contribute to increased racial isolation. Finally, he requested a plan from the FWCS for eliminating racial isolation in McCulloch and Harmar. At the time this report was written, he had not received any such plan.[53]

State regulations permit schools to apply for waivers from the requirements governing school construction and renovation under certain conditions. For example, a school system could petition the General Education Commission of DPI for a waiver, declaring it to be impossible to correct the racial imbalance. The General Education Commission would then review the FWCS situation and approve or disapprove the request for a waiver.

In May 1978, the FWCS did request such a waiver from the State regulations. However, the request was not considered by the General Education Commission because it was withdrawn from consideration by the FWCS,[54] and a petition for waiver is not presently before that commission.[55]

In a related area, the DPI has developed programs to assist teachers working with Hispanic pupils lacking fluency in English.[56] A team from DPI has been working with teachers for 2-1/2 years to develop instructional material to assist Hispanic students in developing fluency in English and at the same time provide them with instruction in their native language.[57] At the present time, the FWCS have made no request to DPI for assistance in developing programs for Hispanic pupils.[58]

The FWCS are recipients of considerable State and Federal financial assistance dispensed through the State for elementary and secondary education in Fort Wayne. The total amount of State education funds distributed to Fort Wayne over the last 6 years was $94,315,796. Federal funds over the same period totaled $8,405,032. The FWCS were thus allocated a total of $102,720,828.[59] Despite the conclusion of DPI that the Fort Wayne schools are racially isolated at the elementary level in violation of State and Federal law, the school system continues to receive vast sums of money through the State.[60]

2. Indiana Civil Rights Commission

The Indiana Civil Rights Commission (ICRC) has also been involved with the Fort Wayne Community Schools. In 1974 the director of the State civil rights commission filed a class action complaint against the Fort Wayne Community Schools and the Indiana Department of Public Instruction, alleging that the FWCS had denied equal educational and employment opportunity to blacks, Hispanics, and women.[61] The complaint did not involve teacher or student assignment, but cited the school system for discrimination in its hiring and promotion practices and in the content of its educational programs.

At the present time, only one issue is being pursued, the practice of steering females into home economics and males into industrial arts.[62] One beneficial result of the investigation has occurred. As a direct result of the case, Fort Wayne appointed the State's first female high school principal.[63]

At the State level, affirmative action has been minimal in regard to the FWCS. The following section covers the involvement of two Federal agencies—the Office for Civil Rights (OCR) of the Department of Health, Education, and Welfare (HEW) and the Department of Justice (DOJ).

Federal Oversight

1. HEW's Office for Civil Rights: Past and Present Activities

The Office for Civil Rights of the Department of Health, Education, and Welfare is responsible under Title VI of the Civil Rights Act of 1964 for conducting compliance reviews of public schools receiving Federal funds to ensure that pupils are not denied the equal benefits of those funds based on their race, color, or national origin. When OCR finds that a public school district is racially segregated, thus denying pupils the equal benefits of Federal funds, it must submit its findings to the school

[53] Ronald A. Boyd, statement to the Indiana Advisory Committee to the U.S. Commission on Civil Rights, June 29, 1978.
[54] Dallas Daniels, director, Equal Educational Opportunity Divison, DPI, interview in Indianapolis, Ind. Aug. 31, 1978.
[55] Agenda for the Commission on General Education, Indiana State Board of Education, May 10, 1978.
[56] Lethenius Irons, interview in Indianapolis, Ind., Aug. 31, 1978.
[57] Ibid.
[58] Ibid.
[59] Robert D. Gadberry, director of accounting, Indiana Department of Public Instruction, telephone interview, Apr. 4, 1979.
[60] Boyd Letter, April 1978.
[61] Holland V. Fort Wayne Community Schools, No. 05804 (Indiana State Civil Rights Commission, filed May 15, 1974).
[62] Julia S. Fangmeier, community service education coordinator, Indiana Civil Rights Commission, letter to Harriette Bailey Conn, director, Office of Public Defender, July 3, 1978 (hereafter cited as Fangmeier Letter).
[63] Ibid.

district and subsequently attempt to negotiate a plan to desegregate the schools. Following unsuccessful negotiations, an administrative hearing procedure is authorized.[64] In addition, OCR may take other steps "authorized by law," such as referring for litigation to the Department of Justice.[65] At the present time, OCR cannot require school districts to bus students even if failure to bus results in minority children being denied educational benefits available to white children. Under the Esch and Eagleton-Biden amendments, mandatory busing of public school students is no longer an available administrative remedy but may be imposed only as a judicial remedy pursuant to litigation.[66]

According to Gary Orfield of the Brookings Institution and a number of other educational authorities, busing is often a necessary component of a realistic desegregation plan, particularly in Northern cities with segregated housing patterns.[67] Kenneth Mines, OCR Director in Region V, and Judith Winston, special assistant to the OCR Director in Washington, D.C., both agree that busing is necessary in many Northern cities like Fort Wayne to being about school desegregation.[68] Mr. Mines in particular has questioned whether, at least in Northern cities, OCR can effectively bring about desegregated education under the constraints of the Esch and Eagleton-Biden amendments.[69] The U.S. Commission on Civil Rights has repeatedly recommended to the Congress that these amendments be repealed.[70]

OCR initiated its investigation of FWCS in 1969 and conducted an onsite review in 1971. During that time OCR found several possible Title VI violations, including discriminatory student and teacher assignment practices. No action was taken in regard to those findings. In 1975 HEW was sued for failing to institute or complete investigations or enforcement proceedings in 46 school districts, including Fort Wayne.[71] Subsequently, OCR dropped all potential Title VI charges against the FWCS except the teacher assignment issue. The reasons for this action are obscure. No written record exists concerning the reasons for dropping the student assignment and other issues.[72]

The Indiana Advisory Committee to the U.S. Commission on Civil Rights recommended in May 1977 that the Commission continue to monitor OCR investigations of Fort Wayne Community Schools and seek State and Federal coordination of such investigations.[73] David S. Tatel, OCR Director in Washington, D.C., responded to this recommendation by reopening the student assignment issue.[74] Nonetheless, the OCR staff who had been working on the Fort Wayne investigation indicated subsequently that the student assignment issue appeared to be receiving little attention. According to O.O Barr, Chief of OCR's Elementary and Secondary Education Branch in Region V, the student assignment issue could not be investigated until review of the eligibility of schools and nonprofit agencies under the Emergency School Aid Act has been completed.[75]

In 1978 Leonard Hamilton, then an equal opportunity specialist in Region V, outlined for the Indiana Advisory Committee OCR's activities in the FWCS investigations. First, OCR had determined in 1975 that faculty assignment was not in conformity with Title VI of the Civil Rights Act of 1964 because it failed to comply with the mandatory Singleton ratio.[76] The Singleton ratio required that the number of minority teachers in each school must be "substantially the same" as the percentage of minority teachers within the school system as a whole.[77] Secondly, the student assignment issue had been dropped at a meeting in 1975 between the Director of OCR and the education branch chiefs from most of the regions in the United States.[78] According to Mr. Hamilton, this decision was made because OCR lacked sufficient information about the assignment of

[64] 42 U.S.C. §2000d-1 (1976).
[65] *Id.*
[66] The Eagleton Biden amendment was enacted as part of Pub. L. No. 95-205, 91 Stat. 146D (Dec. 9, 1977). The Esch amendment is codified at 20 U.S.C. §1714(a)(1976).
[67] Gary Orfield, *Must We Bus?* (Washington D.C.: Brookings Institution, 1978) p. 7.
[68] Kenneth Mines, interview in Cleveland, Ohio, Aug. 25, 1978.
[69] Ibid.
[70] U.S., Commission on Civil Rights, *Desegregation of the Nation's Public Schools: A Status Report* (February 1979), p. 8-13, 1973.
[71] Brown v. Califano, No. 75-1068 (D.D.C., filed July 20, 1975).
[72] Linda A. Cornelius, specialist in charge, Elementary and Secondary Education Branch, OCR, HEW, Region V, Cleveland, Ohio, memorandum to Frederick T. Cioffi, Chief, Operations Branch, Office of the Secretary, HEW, Nov. 8, 1976.
[73] U.S., Commission on Civil Rights, Indiana Advisory Commiteee, *Equal Opportunity in the Fort Wayne Community Schools: A Continuing Struggle*, p. [illegible] (hereafter cited as *Continuing Struggle*).
[74] David S. Tatel, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Oct. 26, 1977.
[75] O.O. Barr, letter to Frank Alford, Midwestern Regional Office, U.S. Commission on Civil Rights, May 3, 1978.
[76] Leonard M. Hamilton, testimony before the Indiana Advisory Committee to the U.S. Commission on Civil Rights, hearing, Fort Wayne, Ind., June 30, 1978, transcript, p. 250-52 (hereafter cited as Hamilton Testimony).
[77] Singleton v. Jackson, 419 F. 2d 1211 (5th Cir. 1970) *cert. denied*, 396 U.S. 1032 (1970).
[78] Hamilton Testimony, p. 251.

elementary school students to proceed, and because the junior and senior high school students had been reassigned so that racial distribution of minority students in each school approximated the minority composition of the school system as a whole.[79]

In May 1978 OCR was reviewing the FWCS for compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.[80] As of January 1979, there had been no written determination as to whether FWCS was in compliance with the requirements of those titles, although under the requirements of a court order, OCR had been expected to make a written finding by December 1978.[81] In January 1979 OCR sent investigators back into the FWCS to interview students, teachers, and principals about alleged racial discrimination in the schools.[82]

In August 1978 OCR inferred but did not formally conclude that teacher assignment within the FWCS complied with the requirements of the Singleton rule as interpreted by that agency's guidelines.[83] OCR guidelines under the Singleton rule provide that assignment of minority teachers in each school shall be within 5 percent of the proportion of minority teachers in the district as a whole. Despite OCR's inference that the FWCS are in compliance with the Singleton rule, 6 of the 42 elementary schools currently have a minority teaching staff beyond the 5 percent limit.[84] In Fort Wayne, minorities constitute 7.6 percent of the teaching staff but 15 percent or more in those six elementary schools.[85] The Singleton rule is concerned with the distribution of minority teachers among the schools within a school district, not with the absolute number of minority teachers employed in that district. In the school year 1977–78, only 63 (9 percent) of 696 elementary school teachers were black and 2 were Hispanic. As the former director of the Fort Wayne Urban League stated, this represents a serious underrepresentation of minorities on the FWCS faculty.[86]

One additional barrier to an effective enforcement program is the lack of ready access to necessary information. For example, no Federal agency records the type and amount of total Federal funds flowing to individual school districts. When seeking such information, an agency generally requests it from the school district under review. HEW's Office for Civil Rights is one such agency whose administrative enforcement efforts are hindered by this lack of centralized data storage.[87] Such information would also aid the U.S. Department of Justice which has actively investigated complaints of unlawful segregation in the FWCS.[88] Civil rights investigators from both Federal agencies have informed staff of the U.S. Commission on Civil Rights that the unavailability of this information constitutes a major impediment to their work.[89]

2. The Role of the U.S. Department of Justice

The Department of Justice began to investigate the FWCS in 1975 for possible violations of Federal law after receiving a series of letters from parents of black students alleging that their children were being denied equal educational opportunity because of the segregated Fort Wayne school system. Following discussions between OCR and DOJ, officials of OCR agreed not to initiate administrative proceedings over the student issue if DOJ decided to litigate the issue. According to Alexander Ross, Chief of DOJ's Education Section in the Civil Rights Division, the Department of Justice concluded in the summer of 1976 that there was insufficient evidence to support litigation based on Title IV.[90]

In September 1977, Drew Days, III, Assistant Attorney General, Civil Rights Division, stated that the DOJ was continuing to study the history of elementary school assignments in Fort Wayne as well as proposals and actions to relieve segregated conditions. Mr. Days indicated that the FWCS had been given a "low priority" because other cases "held out more promise of useful and constructive results; . . . we are not likely to take action under present circumstances."[91] Daniel Jennings, an attorney in DOJ's Education Division, stated in an

[79] Ibid., p. 252.
[80] Leonard M. Hamilton, interview in Cleveland, Ohio, Aug. 25, 1978.
[81] Brown v. Califano, No. 75-1068 (D.D.C.; filed July 20, 1975).
[82] Lon Brown, Chief, Indiana Branch, Elementary and Secondary Education Section, OCR (HEW), Region V, Cleveland, Ohio, telephone interview, Feb. 2, 1979.
[83] Ibid.
[84] Chart on Student Data from OCR (HEW), Aug. 25, 1978.
[85] Ibid.
[86] Greer Statement, p. 3.
[87] Richard White, Chief, Management and Information Assistance Branch, OCR (HEW), telephone interview, Sept. 5, 1978.
[88] Alexander Ross, telephone interview, Aug. 23, 1978 (hereafter cited as Ross Telephone Interview).
[89] Ross Telephone Interview; Judith Winston, Special Assistant to the Director of OCR, telephone interview, Aug. 29, 1978.
[90] Ross Telephone Interview.
[91] Drew S. Days III, Assistant Attorney General, Civil Rights Division, Department of Justice, letter to Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Sept. 7, 1977.

interview in August 1978 that the Fort Wayne case was essentially closed.[93]

As an independent unit of the Federal Government, the Department of Justice is not bound by the findings of any other unit, including OCR. It may make its own determination of legal standards and conduct its own investigation even when cases are referred by OCR for litigation under Title VI.[93] The Department of Justice also has authority under Title IV of the Civil Rights Act of 1964 to litigate issues of pupil segregation in the public schools.[94] The language of Title IV, which refers to "denials of equal protection," echoes the constitutional standards of the 14th amendment.[95] The Supreme Court has determined that only purposeful or intentional discrimination resulting in racially segregated schools represents a violation of the 14th amendment.[96] That is, only a dual school system created by State law or a segregated school system which is the foreseeable result of the deliberate policies and acts of a school board or other public body constitute unlawful *de jure* segregation.

According to Albert Hamlin, Assistant General Counsel, OCR (HEW), the existence of racially isolated schools, even where such schools are the inadvertent effect of racially neutral, albeit intentional, public policies and practices, probably constitutes a violation of Title VI.[97] DOJ, on the other hand, appears to be using standards tantamount to those required by the 14th amendment and Title IV (i.e., purposeful or intentional segregation), in determining whether segregated school systems are subject to judicial intervention under Title VI.[98]

In many Northern cities, it may be impossible to find express school board policies underlying the segregated schools. In the North, segregated schools have often resulted from voluntary and involuntary segregated housing patterns. Mr. Jennings has stated that DOJ has not evaluated whether, for example, the deliberate placement of public housing sites in Fort Wayne has contributed substantially to the creation of segregated neighborhoods and consequently to the racially isolated For Wayne elementary schools. Nonetheless, DOJ has concluded that they have insufficient evidence that deliberate public action has intentionally caused the racially isolated elementary schools to proceed under Title IV against the FWCS.[99]

At best, the differing legal standards applied to segregated schools by DOJ and OCR will require a duplication of investigative work. At worst, it means that neither Federal agency, the only two that can effectively achieve desegregation, will move to desegregate Northern schools. In addition, the federally-funded Legal Services Corporation, which provides legal representation to the poor in civil rights and other litigation, is prohibited by law from providing legal assistance to plaintiffs in desegregation cases.[100] Because of these multiple restraints on enforcement of the law, the burden of desegregation litigation will probably fall on the shoulders of minority parents, those least able to afford the cost.

At the present time, a school desegregation case arising in Marion County, Florida, and now on appeal to the fifth circuit court has raised the issue whether DOJ has authority to sue for injunctive relief under Title VI, e.g., order a school district to desegregate, or whether such relief is only available under Title IV.[101] As discussed earlier, Title IV violations require proof that some public body has acted intentionally or purposefully to create segregated educational conditions. This case brings into question whether mandatory busing will remain an appropriate judicial remedy under Title VI, which prohibits the continued existence of segregated schools resulting from racially neutral affirmative public action. At least in large Northern cities, like Fort Wayne, with segregated housing patterns, it seems likely that for a variety of reasons Federal funds will continue to flow to racially segregated school districts that are denying pupils the equal benefits of those funds.

The foregoing analysis of past and present involvement in the Fort Wayne Community Schools

[93] Daniel Jennings, telephone interview, Aug. 28, 1978 (hereafter cited as Jennings Telephone Interview, Aug. 28, 1978).

[94] Ross Telephone Interview.

[95] 42 U.S.C. §2000c-6 (1976).

[96] U.S. Const. amend. XIV.

[97] Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977). United States v. Board of School Commissioners of Indianapolis, Ind., 573 F. 2d 400 (7th Cir. 1978).

[98] Albert Hamlin, Assistant General Counsel, OCR (HEW), telephone interview, Sept. 7, 1978. *Accord.* Lau v. Nichols, 414 U.S. 563 (1974), Guardians Assn. of New York v. New York Civil Service Commission, 47 U.S.L.W. 2561, 62 (Mar. 13, 1979). However, Mr. Hamlin points out that the issue whether liability under Title VI requires proof of intent to segregate as opposed to segregation occurring as a natural result of racially neutral affirmative acts has never been litigated in regard to student assignment. Albert Hamlin, Assistant General Counsel, OCR (HEW), telephone interview, Apr. 23, 1979.

[99] Ross Telephone Interview.

[99] Jennings Telephone Interview Aug. 28, 1978, and interview Apr. 2, 1979.

[100] 42 U.S.C. §2996f (b)(9) (1976).

[101] United States v. Marion County School District, No. 78—3510 (5th Cir., filed Nov. 15, 1978).

suggests that Federal efforts have resulted in minimal change in the school system.

Chapter 3

Findings and Recommendations

The findings of this report are:

Student and Teacher Assignment in the Fort Wayne Community Schools

1. After at least 10 years of controversy over the issue of school desegregation, the administration and the Board of Trustees of the Fort Wayne Community Schools (FWCS) have failed to develop a comprehensive desegregation plan that will eliminate racial isolation at the elementary school level.

2. In a December 1977 settlement agreement, the FWCS agreed not to transfer involuntarily any student to a school outside his or her usual attendance area for the purpose of achieving racial balance in the elementary grades, but did agree to open magnet schools in the central city.

3. At the close of the 1978–79 school year, the FWCS had failed to open the magnet schools required by the 1977 agreement.

4. The superintendent of the Fort Wayne Community Schools has expressed his opposition to busing to achieve racially balanced schools.

5. As of April 30, 1979, the Office for Civil Rights of the Department of Health, Education, and Welfare has made no official determination whether teacher assignment in the FWCS complies with regulations on faculty desegregation.

6. Minorities are underrepresented on the teaching staff of the FWCS.

7. The FWCS has no bilingual-bicultural educational program.

State Directives and Guidance

1. Indiana State law prohibits school districts from segregating pupils on the basis of race.

2. The Indiana Department of Public Instruction possesses the legal authority to disapprove any proposed new construction or renovation of school buildings that may foster racial isolation.

Plans for building or renovating Indiana schools in a district with a minority population of 5 percent or more must be submitted to the Department of Public Instruction, Office of Equal Educational Opportunity Division (EEOD), to ensure that these plans do not foster racial isolation.

In April 1978 plans submitted by the FWCS to the EEOD were disapproved because the plans would promote racial isolation at the elementary school level.

Federal Involvement

1. For over 10 years, a variety of Federal agencies have been investigating alleged discrimination in the FWCS.

2. Since May 1978, OCR under its Title VI authority has been evaluating the compliance of the FWCS with a variety of Federal equal educational opportunity requirements pertaining to student and teacher assignment and curriculum.

Under the time limits set by *Brown v. Califano*, OCR was required to make a written determination of its findings by December 1978.

As of February 1, 1979, no such determination had been made. In fact, in January 1979 OCR investigators returned to Fort Wayne to conduct yet another onsite review.

3. In 1978 OCR inferred that the FWCS were in compliance with the Singleton ratio governing teacher assignment.

At that time, 63 (9.11 percent) of the 696 elementary school teachers were black and 2 were Hispanic.

Six of 42 elementary schools had a higher minority teacher compositon than OCR permits under its stated interpretation of the Singleton rule.

4. Neither OCR nor any other Federal governmental unit stores data by school districts on the type and amount of Federal funds going to a school district.

When a Federal agency needs to know the extent of funds going to a school district under each grant program, they routinely ask the school district.

OCR and Department of Justice investigators report that the lack of ready access to this information constitutes a major barrier to effective enforcement activity.

5. The Esch and Eagleton-Biden amendements effectively deter OCR from pursuing administrative remedies under Title VI to enforce desegregation.

6. The U.S. Commission on Civil Rights has repeatedly requested the Congress to repeal the Esch and Eagleton-Biden amendments.

7. The Civil Rights Division of the Department of Justice has effectively terminated its investigation of the FWCS based on its determination that the Fort Wayne schools comply with Federal law regarding student assignment practices.

8. DOJ has not investigated under its Title IV authority whether governmental action, such as publicly supported housing discrimination against minorities, has created the segregated housing patterns that contribute to the racially isolated schools in Fort Wayne.

Coordination in Civil Rights Enforcement

1. Just as the Indiana Advisory Committee found in 1977, State and Federal agencies with enforcement authority pertaining to equal educational opportunity, including the State of Indiana Department of Public Instruction, the Office for Civil Rights of HEW, and the Department of Justice, continue their failure to coordinate investigative and enforcement efforts.

The failure of those Federal agencies and the Indiana Department of Public Instruction to coordinate their efforts causes duplication of work for the agencies and for the school districts under investigation.

DOJ and OCR have developed different regulations, legal standards, and investigative and enforcement procedures in the area of equal educational opportunity.

2. OCR is required by law to refer certain cases involving denial of equal educational opportunity, after thorough investigation, to DOJ for enforcement.

Recommendations for immediate action are:

1. The Indiana Advisory Committee to the U.S. Commission on Civil Rights again recommends to the superintendent and the Board of School Trustees of the Fort Wayne Community Schools that these responsible officials develop a new elementary school reorganization plan to foster high quality desegregated education. These officials should work closely with the Fort Wayne community, including parents of black, Hispanic, and white students; students; teachers; and representatives of major women's and minority organizations. Such a plan must be educationally sound and must: a) further systemwide desegregation, b) provide necessary bilingual-bicultural programs, and c) develop two-way busing wherever busing programs are found to be necessary to achieve racially balanced schools.

2. The Indiana Advisory Committee recommends that the U.S. Commission on Civil Rights again formally request that the Congress repeal the Esch and Eagleton-Biden amendments, thus returning to OCR effective administrative enforcement power under Title VI in Northern school districts.

3. The Indiana Advisory Committee recommends to the Commission that it once again encourage the President to act on a recommendation that the Commission has forwarded to him on several occasions. That recommendation is:

> . . . under the direction of an appropriate Federal official to be designated by the President, all of the resources and authorities of the executive branch be pooled in the interest of bringing about a vigorous and effective enforcement of the constitutional mandate to desegregate elementary and secondary schools.

Specifically, that authority should develop one consistent set of legal standards, regulations, and investigative and enforcement procedures in the area of equal educational opportunity.

4. The Indiana Advisory Committee recommends that the State of Indiana Department of Public Instruction develop regulations pertaining to student and teacher assignment, teacher employ-

ment, and curriculum content that would ensure equal educational opportunity.

5. The Indiana Advisory Committee recommends that the Indiana Department of Public Instruction coordinate its investigative and enforcement effort with appropriate Federal agencies, including OCR and DOJ, to avoid unnecessary duplication of effort and to ensure an effective enforcement effort.

6. The Indiana Advisory Committee recommends that OCR complete its investigation of the Fort Wayne Community Schools and make a written determination of its findings in regard to student and faculty assignment and curriculum under its Title VI authority, as the Federal court ordered it to do by December 1978. That determination should be made no later than August 1, 1979.

7. The Indiana Advisory Committee recommends that the Office for Civil Rights of the U.S. Department of Health, Education, and Welfare begin storing data on a continuing basis of the type and amount of Federal funds flowing to each school district. Such data should be readily accessible to Federal, State, and local agencies, as well as to the general public.

8. The Indiana Advisory Committee recommends that the Department of Justice reopen its investigation of the Fort Wayne Community Schools under its Title IV authority to determine whether there has been deliberate governmental action, such as the discriminatory placement of public housing sites, which has contributed to the racial isolation in the Fort Wayne elementary schools.